IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1493 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

MANGUBHAI L BARIYA

Appearance:

1. Special Civil Application No. 1493 of 1993

MR HD DAVE, AGP, for Petitioner

NOTICE SERVED for Respondent

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 26/03/2003

ORAL JUDGEMENT

By filing instant petition under Article 227 of the Constitution, the Executive Engineer, Road and

Building Department, Bodeli, has challenged legality of order and award dated May 14, 1991 rendered by the Labour Court, Vadodara, in Reference No.8 of 1987, by which he is directed to reinstate the respondent in service with full back wages.

2. The respondent was employed by the petitioner in connection with construction of a road. His services were terminated arbitrarily on April 21, 1986 without serving notice on him or paying compensation to him. His case was that he had put in four months' service when his services were illegally terminated. He had raised a dispute challenging action of the petitioner in terminating his services. On failure of conciliation proceedings, the dispute was referred to Labour Court, Vadodara for adjudication where it was numbered as Reference No.8 of 1987.

3. A statement of claim was filed by the respondent at Exh.3. Though several notices were issued to the petitioner, the petitioner did not participate in the proceedings before the Labour Court. In view of the strange stand taken by the petitioner, the Labour Court was left with no option, but to proceed exparte against the petitioner. The respondent had filed an affidavit at Exh.12 in support of the claim mentioned by him in his statement. He had also examined himself on oath at Exh.9. With a view to affording opportunity of being heard, the Labour Court had served notices dated December 7, 1987 and April 16, 1988 as a special case, but the petitioner had failed to avail of the opportunity given to the petitioner. Neither the averments made by the respondent in his affidavit, which was filed at Exh.12, nor the statements made by him on oath were controverted. The Labour Court, therefore, has accepted the case of the respondent and directed the petitioner to reinstate the respondent in service with back wages by award dated May 14, 1991, giving rise to instant petition.

4. Mr.H.D.Dave, learned Assistant Government Pleader, submitted that the petitioner was employed on daily wages and, therefore, direction to reinstate him in service with back wages deserves to be set aside. It was claimed that no evidence was adduced by the respondent to establish that he had served the petitioner for more than 240 days and, therefore, the Labour Court was not justified in directing his reinstatement in service on the basis that the petitioner had committed breach of provisions of Section 25-F of the Industrial Disputes Act, 1947 ("the Act" for short). Placing reliance on the statement containing details of number of working days of

the respondent, which is produced by the petitioner at Annexure-B to the petition, it was argued that in fact the respondent had put in 106 days of service and, therefore, the impugned award should be set aside. What was emphasized was that the petitioner had terminated the services of the respondent as a result of non-renewal of contract of employment between the petitioner and the respondent on its expiry and thus, the respondent having not been retrenched from service, the direction to the petitioner to reinstate the respondent in service with back wages could not have been issued. In the alternative, it was pleaded that the respondent could not establish before the Labour Court that during the interregnum period he was not gainfully employed and, therefore, the direction to reinstate him in service with back wages deserves to be set aside.

5. Though the respondent is duly served, he has neither appeared through a Lawyer nor in person.

6. The order-sheet indicates that the petition was placed for admission hearing before Division Bench on March 1, 1993, and after hearing the learned counsel for the petition, following order was passed on that day :

> "Rule. Interim relief against the order of reinstatement is refused. As far as the payment of back wages is concerned, the petitioner may withhold the payment of the same on condition that in case the petitioner loses in the petition, the respondent-workman will be paid the amount of backwages as directed by the Labour Court or as may be directed by this Court with 12% interest which will be calculated from the date of the award. It will be open to the petitioner to move this Court for early date of hearing after the other side is served."

The Court has considered the submissions advanced at the Bar and the documents forming part of the petition. From the record of the case, it is evident that though sufficient opportunity was afforded to the petitioner, the petitioner had chosen to remain absent before the Labour Court and had not contested the case at all. The statement of claim, which was filed by the respondent, is produced by the petitioner at Annexure-C to the petition. It indicates that when the services of the respondent were terminated, he had put in four months' service. The finding recorded by the Labour Court in Para-4 of the impugned award unerringly establishes that the project, on which the respondent was

employed, was not complete and other employees were continued in service. No reason was assigned by the petitioner as to why the services of the respondent were terminated. Under the circumstances, the finding recorded by the Labour Court that termination of services of the respondent is arbitrary deserves to be upheld. Further, there is no manner of doubt that termination of services of the respondent is contrary to the provisions of Section 25G of the I.D.Act. Therefore, the direction given by the Labour Court to the petitioner to reinstate the respondent in service will have to be upheld.

7. The plea, which is based on the statement containing details of number of working days of the respondent produced by the petitioner at Annexure-B to the petition, cannot be accepted. It is well to remember that this Court is exercising powers under Article 227 of the Constitution, which are essentially supervisory in nature. The evidence, which could have been produced by the petitioner before the Labour Court and which is not produced by the petitioner before the Labour Court, cannot be looked into by the Court while hearing a petition under Article 227 of the Constitution. Therefore, the reliefs claimed in the petition cannot be granted on the basis of the statement containing details of number of working days of the respondent which is produced at Annexure-B to the petition. The submission that the respondent was not retrenched from service and, therefore, the award impugned in the petition should be set aside, cannot be accepted. As explained in Section 2(oo) of the Act, "retrenchment" means the termination by the employer of the services of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action. However, Clause (bb) provides that termination of the services of the workman as a result of non-renewal of the contract of employment between the employer and the workman concerned on its expiry, would not amount to retrenchment. The petitioner could not produce any material before the Labour Court to indicate that the respondent was employed on the basis of contract and that there was non-renewal of the contract of employment on its expiry. Therefore, in absence of any evidence on record, it is difficult to agree with the submission made by the learned counsel for the petitioner that the respondent was not retrenched from service. Further, the learned counsel for the petitioner has produced communication dated July 16, 1994 addressed by the Deputy Executive Engineer, District (Road & Building) Sub-Division, Chhotaudepur to Mr.Mehul Rathod, the then learned Assistant Government Pleader, High Court, Ahmedabad, for perusal of the Court. It shows that in

view of the interim order passed by the Court in instant petition, the respondent was taken in service and paid wages accordingly thereafter. On overall view of the matter, this Court is satisfied that the direction given by the Labour Court to reinstate the respondent in service is well-founded and no case is made out by the learned counsel for the petitioner to interfere with the same in instant petition.

8. So far as the back wages are concerned, nothing could be produced on record by the respondent to establish that he was not gainfully employed during the interregnum period. Further, it seems that the respondent was employed on daily wages and, therefore, a question arises whether the respondent would be entitled to the relief of full back wages in view of the principle viz. "no work, no pay". The Labour Court has not given any reason as to why the respondent would be entitled to back wages. The Supreme Court in Hindustan Motors Ltd. v. Tapan Kumar Bhattacharya and another, 2002 AIR SCW 3008 has ruled that relief of back wages need not follow as a matter of course when reinstatement is ordered. Having regard to the facts and circumstances as emerging from the record, the Court is of the opinion that the Labour Court was not justified in directing the petitioner to pay back wages to the respondent and, therefore, a case is made out to set aside the said direction.

For the foregoing reasons, the petition partly succeeds. The award and order dated May 14, 1991 rendered by the Labour Court, Vadodara in Reference No. 8 of 1987 is partly modified. The direction given by the Labour Court to the petitioner to reinstate the respondent in service is hereby upheld. The direction given by the Labour Court to the petitioner to pay full back wages to the respondent is hereby set aside. Rule is made absolute to the extent indicated hereinabove. There shall be no order as to costs.

(J.M.Panchal, J.)

(patel)